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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/554,626	10/26/2005	Colin Brown	102790-133 (30077)	9217
27389	7590	08/31/2007	EXAMINER	
NORRIS, MC LAUGHLIN & MARCUS			MCKANE, ELIZABETH L	
875 THIRD AVE			ART UNIT	PAPER NUMBER
18TH FLOOR			1744	
NEW YORK, NY 10022				

  

MAIL DATE	DELIVERY MODE
08/31/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/554,626	BROWN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Leigh McKane	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 October 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10262005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Objections***

1. Claim 7 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend upon another multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Chasen (US 2003/0126986).

Chasen teaches a dispensing device **10** which includes an electrically driven actuator device (fan) **14** for dispensing a volatile material to an ambient environment. The apparatus includes a refill **16** which includes a reservoir **42** containing a volatile liquid and a closure means **36**. A switch means **58** associated with the dispensing device is adapted to engage or interact with the closure means **36** when the dispensing device is appropriately assembled. See paragraph [0006], [0016], and [0027]-[0031]. The closure means may be an electrical conductive strip or a magnet. See paragraphs [0029], [0034], and [0036].

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4. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Kvietok et al. (US 2003/0126986).

Kvietok et al. teaches a dispensing device **20** which includes an electrically driven actuator device for dispensing a volatile material. The invention of Kvietok et al. further includes a refill **22** which includes a reservoir containing a volatile liquid and which further includes a closure means **74** or **102**. A switch means associated with the dispensing device is adapted to engage or interact with the closure means when the dispensing device is appropriately assembled. See paragraph [0079]. The actuator may be a heater or a fan (paragraph [0081]) and the switch means may incorporate a conductive strip or an RF transmitter. See paragraphs [0079] and [0083].

#### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Chasen or Kvietok et al..

Although neither Chasen nor Kvietok et al. disclose a plurality of switch means and a plurality closure means, it is deemed obvious to do so since multiplying parts for a multiplied effect is obvious where the results are not unexpected. As multiplying the number of closures and switch means would have resulted in a system having a robust means of assuring correct assemblage of the apparatus, a known and expected result, it would have been obvious in the inventions of Chasen or Kvietok et al..

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Chasen or Kvietok et al., both in view of Liefke (US 4,308,011).

Chasen and Kvietok et al. are silent with respect to a closure means incorporating a metallic coil which resonates and emits a return resonant signal. Liefke teaches an apparatus for receiving and supporting an article wherein a means senses the presence of the article and wherein the means uses a coil in a resonant circuit so that depositing the article in the apparatus "will effect the output of the coil and resonant circuit." See col.2, lines 1-17. As the closure and

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switch means of Liefke is merely a functional equivalent of the closures/switch means of Chasen and Kvietok et al., it would have been obvious to one of ordinary skill in the art to substitute one for the other.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Leigh McKane*  
**Leigh McKane**  
**Primary Examiner**  
**Art Unit 1744**

elm  
28 August 2007